

Section 1

Background

1.1 Purpose and Scope of Work

In 2001, the incorporation of the City of Liberty Lake (City) became official. Subsequently, the new City began to establish itself and the levels of service available to its citizens and surrounding area. At the heart of this study is an examination regarding the expansion of those services and the transfer of responsibilities for water, wastewater, stormwater, and lake management from the Liberty Lake Sewer and Water District (District) to the City.

There are numerous legal and procedural thresholds, outlined in Chapter 36.93 RCW and Chapter 35.13A RCW, that validate an assumption. This document is not intended to conduct a legal review of all those details. Rather, this document provides an objective feasibility evaluation of the organizational, utility systems, and financial implications for each of the viable assumption alternatives. However, it is important to establish validity of this evaluation by providing confirmation of the most basic criteria as stated below.

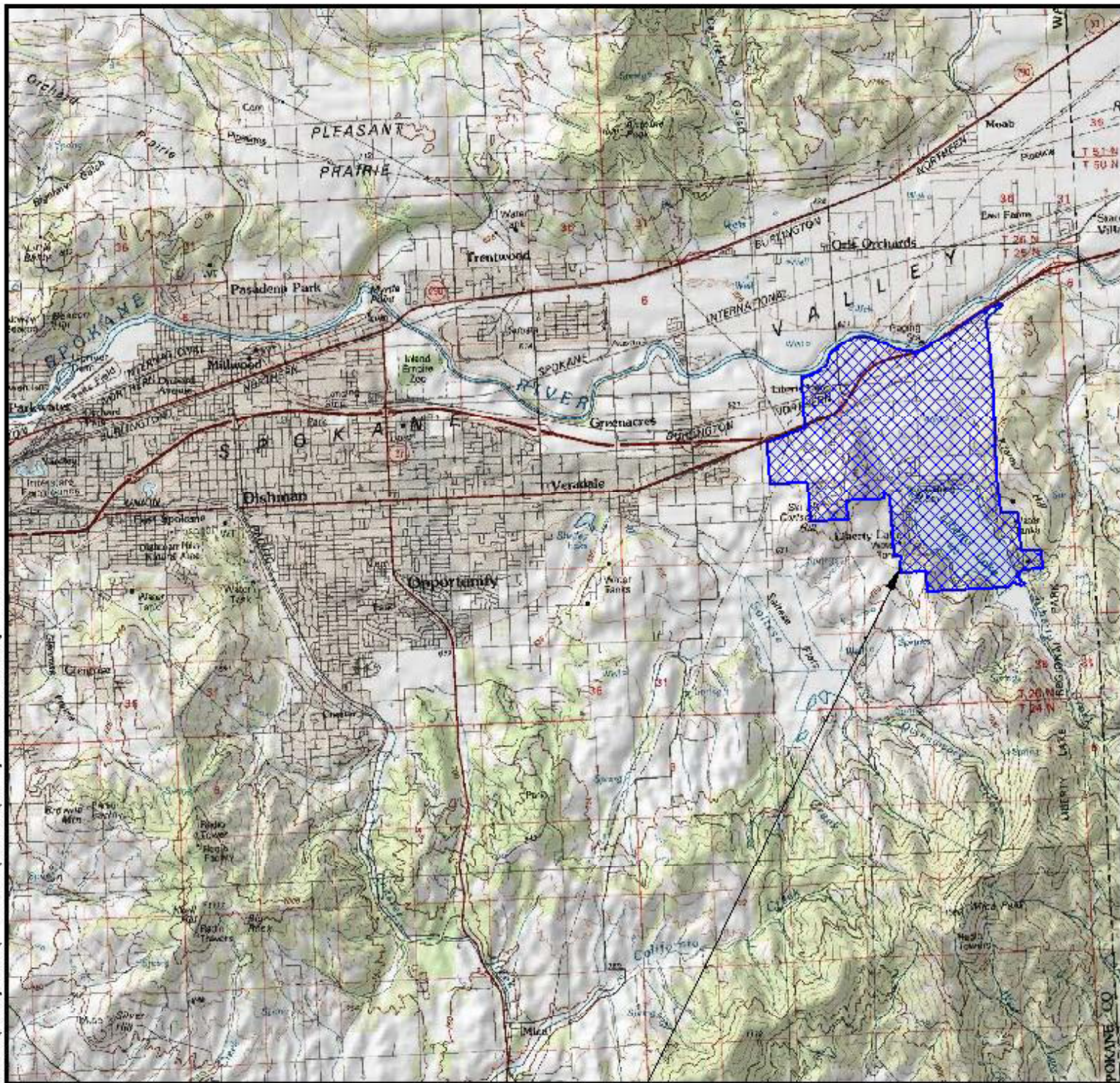
This document is not intended to conduct a legal review...this document provides an objective feasibility evaluation of the organizational, utility systems, and financial implications for each of the viable assumption alternatives.

Washington State statutes specifically provide the authority for a city to assume jurisdiction for water and wastewater services within its boundaries from a special purpose district. More so, RCW 35.13A.030 states, “Whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050.”

A letter from the Spokane County Assessor’s Office, dated April 2, 2004 confirms that 78% of the taxable assessed valuation of properties in the District is within the corporate boundaries of the City of Liberty Lake. A copy of the letter is included in the Appendix A. Exhibit 1-1 provides a vicinity map showing the location of the Liberty Lake community. Exhibit 1-2 illustrates the differing corporate limits of the District and City, and the fact that approximately 76% of the Districts current area is within the City limits. Both of the fundamental criteria for assumption described above have been met.

In February, 2004, the City engaged Economic and Engineering Services, Inc. in conjunction with Southwick Enterprises to prepare a Feasibility Study (Study). As stated in the contract, “The purpose for the Study is to provide the local elected officials and community members with a clear and objective analysis on how to offer the community the best possible water and wastewater services while achieving equitable rates, fair representation, and transparent operations. The Study will assess alternatives for various actions associated with an evaluation of engineering, environmental, and financial issues related to water and wastewater services.”

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Liberty Lake
Community

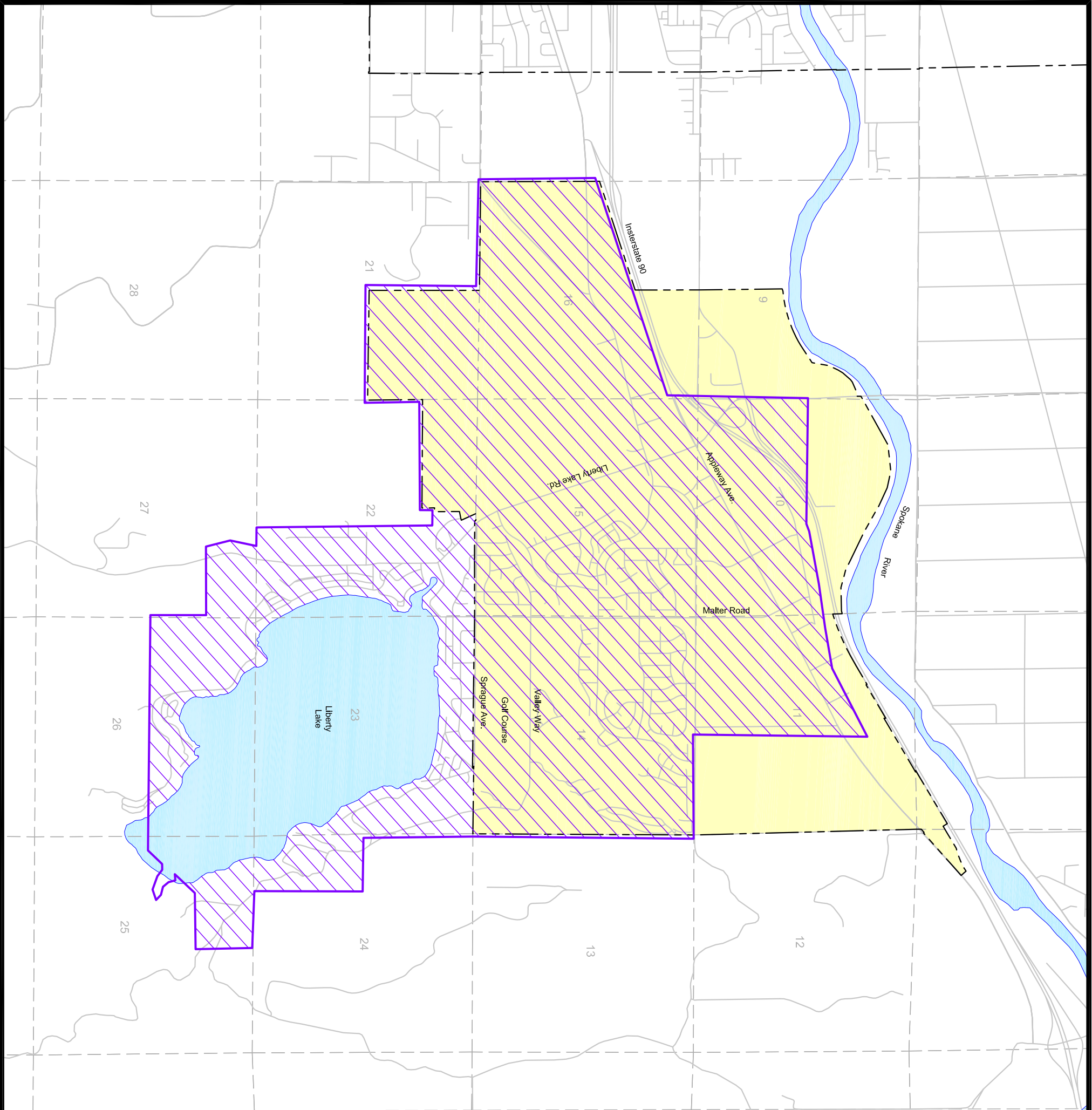
EXHIBIT 1-1 Liberty Lake Community Vicinity Map

November 2004

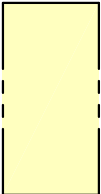


Economic and Engineering
Services, Inc.

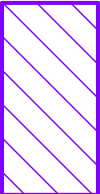
Bullwinn • David Cullen • Clayton • David • ...



Legend



City of Liberty Lake
Corporate Limits



Liberty Lake Sewer and Water District
Corporate Limits



SCALE IN FEET

EXHIBIT 1-2

**Liberty Lake Community
Corporate Limits**

November 2004



Economic and Engineering
Services, Inc.
Bellevue Mount Vernon Olympia Portland Tri-Cities

The consultants' scope of work for the Study states: "The Study should:

- Provide an overview of the Liberty Lake Sewer and Water District (District) history and operations.
- Provide an inventory of all assets including capital improvements and source of funding.
- List each jurisdiction's goals for directing water and wastewater services and assess the viability of achieving them.
- Provide a complete list of Washington State water and wastewater assumptions with characteristics and outcomes.
- Evaluate the strengths and weaknesses associated with the following alternatives – status quo, partial assumption, and full assumption.
- Scrutinize a cost/benefit analysis for assumption.
- Determine the implications of participating in a regional system.
- Provide a graphic summary of the strengths and weaknesses of each alternative in a creative and meaningful way.
- Recommend a strategy for communicating the outcomes to the community.

Throughout the conduct of this study, the priority and emphasis of these goals has shifted somewhat. In conducting this study, three assumption alternatives were considered: maintaining the status quo where the District continues to be responsible for utility and lake management services; implementing a partial assumption where the District would continue to be responsible for areas south of Sprague Avenue and the City to the north, and; performing a complete assumption where the City would assume all assets and responsibilities of the District.

Before exploring the future opportunities associated with this assumption evaluation, it is important to put a historical perspective on the evolution of both the City and District. Since the early days when the area was predominately rural and sparsely populated, the District has laid the framework for infrastructure, growth, and lake protection. There are many accomplishments to point at during this timeframe. However, the advent of the Growth Management Act, urban densities, and incorporation have brought new demands and expectations for coordinated planning, unified governance, consistent development criteria, and environmental stewardship. The conflict lies between concern for the sustainability of past services, split representation, and the inefficiencies of duplicate governments in such a small geographical area.

1.2 History of the Liberty Lake Sewer and Water District

Since the District's formation over 30 years ago, their activities have been focused in the Liberty Lake area, centering on the lake itself and expanding from there. It has developed a strong reputation in the vicinity and region. Its history is one of accomplishment, not mismanagement or regulatory non-compliance. It has focused its services on only one area of the County and filled a void when the County was unable to deliver wastewater, water, stormwater, or lake management support. In part, the fact that the area is served by only one utility contributes to

both the difficulty and simplicity of moving ahead with the transfer of control to the newly incorporated City.

Provided below is a recap of some of the more significant events in the District's history, as stated in the District's report, *Restoring Liberty Lake – a record of achievement, the first sixteen years 1973-1989*, published in December 1989 and the District's current website:

"In 1965, Liberty Lake was dying. This irreplaceable resource had once been a beautiful, clean, clear lake heavily used by area fishermen, boaters, swimmers and picnickers. However, the natural eutrophication process of the lake was being speeded up by a thousand-fold by man's activities, and the water was starting to lose its clarity. The surface was covered with slimy blue-green algae and decaying weeds for longer periods of time each year. Fish were stressed and dying from lack of oxygen. If left alone, Liberty Lake would soon become unfishable, unswimmable and unusable."

"In 1968, when the residents of Liberty Lake realized the lake was dying, they turned to the Property Owners Association to solve the problem. The association educated itself about lakes and water quality problems, then requested assistance from Spokane County to protect the lake by constructing a sewer system around the entire lake. When help was not forthcoming, the Property Owners Association determined a sewer district was needed, and spearheaded a petition drive to form a sewer district to accomplish lake restoration. In 1973, the people voted to form a sewer district and elected three commissioners to be their representatives."

Building on this brief synopsis of the District's history, the next part of this chapter will serve to highlight their major accomplishments and milestones that helped to mold them into what the District is today.

■ 1970s

- ◆ September 19, 1974. The Board of Commissioners adopted Resolution 14-74 calling for a vote to approve the Comprehensive Plan to construct a wastewater system and Resolution 15-74 calling for a vote to approve a revenue bond issue of \$1.7 million to pay for the construction. The voters approved both on November 5, 1974. In 1975, two General Obligation bond issues were approved by the Board for \$500,000 and \$275,000 but records available for review didn't show the outcome of the vote.
- ◆ 1976. ULID No. 1 was approved by the Board. The initial wastewater systems around Liberty Lake were constructed.
- ◆ On May 17, 1978, the Board of Commissioners approved Resolution 4-78 to "exercise all the powers permitted to a water district under Title 57 RCW relating to the constructing, maintaining and operating of a water supply system." In October 1979, the Board approved Resolution 20-79 creating ULID No. 2 for water system improvements.

■ 1980s

- ◆ January 16, 1980. The Board approved Resolution 6-80 to issue \$1,119,300 in wastewater revenue bonds to pay for wastewater system improvements, including a 1 MGD sewage treatment plant. The total estimated cost was \$11,403,250 with the balance paid for by \$300,000 in General Obligation (GO) bonds, grants from U.S. Environmental Protection

Agency (EPA) and the Department of Ecology, and substantial payments from Hewlett Packard, the Highlands and Homestead for their share of the plant capacity.

- ◆ May 7, 1980. The Board adopted Resolution 27-80 approving the Comprehensive Water Report.
- ◆ April 21, 1981. The Board adopted Resolution 22-81 to amend the Comprehensive Water Report.
- ◆ September 22, 1980. The District entered into a contract with Marine Construction and Dredging Company, Inc. for the Liberty Lake Restoration project.
- ◆ January 24, 1981. The Marine Construction and Dredging Company failed to complete the work and the District declared an emergency to take over control of the contractor's equipment and direct their engineer to find another contractor to complete the work.
- ◆ March 17, 1981. The District annexed the Hewlett Packard and Homestead properties.
- ◆ September 1, 1981. The Board approved Resolution 61-81 to implement reduction, minimization and/or elimination of pollutants from its lakes, streams and waterways.
- ◆ December 21, 1982. Resolution 86-82 was approved by the Board for an Industrial Wastewater Discharge Permit for Hewlett Packard.
- ◆ January 18, 1983. Resolution 4-83 was approved by the Board accepting completion of the wastewater treatment facilities from Morgen & Oswood.
- ◆ May 17, 1983. The Board approved Resolution 45-83 amending Resolution 61-81 described above and adopted Spokane County Guidelines for Stormwater Management (1981) as an integral part of the criteria established by this Resolution.
- ◆ September 11, 1984. The Board approved Resolutions 69-84 and 70-84 creating ULID No. 6 for wastewater improvements and ULID No. 7 for water improvements, respectively.
- ◆ March 19, 1985. The Board approved Resolution 30-85 specifying and adopting a policy for critical (hazardous) materials and another Resolution specifying and updating its policy for industrial waste within the District boundaries.
- ◆ June 4, 1985. The Board approved Resolution 47-85 accepting the Final Report for the Stormwater Management Study with Watershed Stormwater Management Guidelines and by Resolution 48-85 adopted a policy for stormwater management of the Liberty Lake watershed.
- ◆ February 4, 1986. Resolution 11-86 was approved, which added a 10% surcharge on all subsequent ULID and LID costs "as a means of, and for the purpose of, paying all or part of the District's costs of reducing, minimizing, or eliminating the pollutants from all District waters."
- ◆ November 4, 1986. Resolution 110-86 was approved which adopted District water service boundaries for the Spokane County Coordinated Water System Plan.
- ◆ June 2, 1987. The Board approved Resolution 32-87 that adopted the 1979 Spokane Aquifer Water Quality Management Plan and the attached Management Agency Implementation Statement designating responsibilities of the District.

- ◆ 1987. Resolution 54-87 was adopted that amended Resolution 55-83 (Wastewater Charge Ordinance) and added “a new user classification called Dedicated Capacity defined as future use by contract (300 gallons per day ERU).”
- ◆ March 7, 1989. The Board approved Resolution 7-89 adopting the regional Spokane River Phosphorus Management Plan.
- ◆ April 4, 1989. Resolution 10-89 was approved that states, “the Liberty Lake Restoration Plan of October 1979, and the Liberty Lake Restoration Project Final Report for the Stormwater Management Study with Watershed Stormwater Management Guidelines of January 1985 are hereby adopted as the District’s comprehensive plan for the reduction, minimization or elimination of pollutants from Liberty Lake.”

■ 1990s

- ◆ December 17, 1992. Resolution 32A-92 was approved which amended and superceded Resolutions 32-92, 61-81 and 45-83 thereby consolidating the District’s stormwater management practices. Step one of the Required Procedures states, “The District will provide and install, free of charge, all protection measures deemed necessary by the District, such as straw bales, siltation fences, construction fences, etc.”
- ◆ October 12, 1993. The Board approved a Fire Protection and Emergency Intertie Agreement with the East Side Liberty Lake Improvement Club (ELLIC) which is a private, non-profit Group A water system originally incorporated in 1945.
- ◆ April 21, 1994, Resolution 26-94 approved the annexation of 950 acres (Meadowood) to the District.
- ◆ Resolution 31-96 was approved that declared the District’s intention to form ULID No. U-108 for the acquisition, construction and installation of an upgrade to the Garry Booster Station, related improvements and replacement of water lines.
- ◆ May 21, 1998. The Board approved Resolution 21-98 which amended and superceded Resolutions 32-92, 61-81, 45-83 and 32A-92 and further established the District’s stormwater management practices. Resolution 21-98 appears to be the current governing policies for stormwater management.
- ◆ July 16, 1998. Resolution 36-98 changed the name of the District from the “Liberty Lake Sewer District” to the “Liberty Lake Sewer and Water District”.
- ◆ September 1, 1998. The effective date of the District’s National Pollution Discharge Elimination System (NPDES) permit which was issued by Ecology and allows for average daily flows of effluent during the maximum month of 0.89 MGD without phosphorus removal. Above that flow level, phosphorus removal is required up to maximum flows of 1.0 MGD for average day.
- ◆ October 30, 1998. The District signed an updated Fire Protection and Emergency Intertie Agreement with the Eastside Liberty Lake Improvement Club, amending the October 12, 1993 agreement.
- ◆ November 19, 1998. The Spokesman Review reported that the District “now has a newly constructed \$800,000 building and five times as much office space for district workers, who had been using storage and lunch rooms as offices in recent years.” The District’s new office building is named the “Denny Ashlock Building” for its long-time Commissioner.

- ◆ 1998. During this year, the District formed a Watershed Citizens Advisory Committee. Detailed documentation has not been reviewed for the Committee. Presumably the committee involves a number of citizens who dedicate time and effort for the protection of water quality in Liberty Lake and the watershed. Minutes of the Board of Commissioners' meetings periodically mention reports for the activities of the Committee. The Committee meets monthly. Such a committee can provide valuable resources and support for District water quality programs.

■ 2000s

- ◆ February 17, 2000. The Board approved Resolution 0-06 agreeing, "to participate in the Wellhead Protection Implementation Program of the Spokane Aquifer Joint Board, and agreed to contribute a maximum monetary amount of 17 cents per residential customer per month."
- ◆ August 23, 2001. Resolution 25-01 was approved by the Board that adopted the Final Facilities Plan for the Liberty Lake Wastewater Treatment Facility upgrade to 2.0 MGD using biological phosphorus removal and discharge to the Spokane River.
- ◆ April, 2003. The District's Comprehensive Wastewater System Plan was completed. This document updated projections for District growth and wastewater flow.
- ◆ May 30, 2003. Resolution 20-03 was approved by the Board. This resolution accepted the boundary map for the Eastside Liberty Lake Improvement Club.
- ◆ August 20, 2003. Resolution 30-03 was approved that authorized "the Water Utility Service Area Agreement, Spokane County Coordinated Water System Plan, to amend the Agreement dated November 24, 1999, and re-establish the boundaries of the Liberty Lake Sewer and Water District, and the Eastside Liberty Lake Improvement Club."
- ◆ 2003. Analysis was initiated on a Total Maximum Daily Load (TMDL) study to determine the acceptable level of dissolved oxygen in the Spokane River and how this might impact all point discharge wastewater treatment plants and non-point sources of contamination.
- ◆ March, 2004. Plans and specifications submitted to Ecology for review and approval regarding the upgrade of the District's wastewater treatment plant.
- ◆ May, 2004. The Board authorized the advertisement for bid on construction of upgrades to the wastewater treatment plant as specified in the 2001 Facilities Plan.
- ◆ June 9, 2004. The Department of Ecology approved the District's request to upgrade its treatment plant but restricted the facility to remain at its 1.0 MGD capacity, as permitted in its 1998 NPDES permit. Ecology disapproved any expansion beyond 1.0 MGD and specified that additional upgrades may be required to comply with TMDL requirements.
- ◆ August 4, 2004. The Board rejected the \$11.1 million low bid and all other bids submitted for construction of the wastewater treatment plant upgrade. Subsequently, the plant construction project was rebid.
- ◆ August 27, 2004. The Board republished the plant construction project.
- ◆ September 24, 2004. The Board awarded the contract in the amount of \$11,069,000, and a notice to proceed was issued on October 22, 2004.

The service provided by the District over the years has been commendable. In fact, a public opinion survey conducted during 2003 confirmed that the District was held in high esteem by its customers. However, the criteria for assumption centers on the best capability, efficiency, and

consistency in providing service regardless of the service provider. This study focuses on these considerations.

1.3 History of the City of Liberty Lake

The core population of the area originally centered around the lake. However, as stated in a 1992 letter from Mr. Dennis Ashlock, District Commissioner, the District encouraged the development and growth of the area north of the lake. Growth was supported by the very nature of service provided by the District. Providing both water and wastewater service to undeveloped property made the District a major player in development and growth of the area. The development community paid a substantial

The development community paid a substantial portion of the price for the expansion of the District systems through contributions by developer constructed extensions, dedicated capacity payments, and other capital contributions.

portion of the price for the expansion of the District systems through contributions by developer constructed extensions, dedicated capacity payments, and other capital contributions. This contributed capital has in turn successfully generated ample reserve funds, and supported lower utility rates for area residents. The District's success in that area helped create the current dilemma, i.e. the formation of a highly desirable area to reside which resulted in greater densities, urban land uses, and the eventual formation of the City to provide a broader range of local and urban services. A summary of the City's history follows:

■ 1990s

- ◆ April 17, 1999. The Spokesman Review reported that: "The discussion about Liberty Lake incorporation took on a more realistic tone this week after a study by a Bellevue consulting firm indicated that the community has enough revenue potential to operate its own city. The \$12,000 study was funded by homeowners associations, community groups and private contributors. In it, Financial Consulting Solutions Group, Inc. called Liberty Lake an 'economically balanced community' with the ability to generate about \$2.4 million in revenue..." The Financial Consulting Solutions Group, Inc. is now representing the District in the assumption process.
- ◆ July 15, 1999. The Spokesman Review again reported that: "Yet another incorporation vote appears ahead for the Spokane Valley. This time, the proposed city is Liberty Lake. A group of nearly 100 Liberty Lake residents filed an official notice of incorporation Wednesday with the Spokane County Commissioners' office. The group, which calls itself Liberty Lake 2000, wants to preserve Liberty Lake's sense of community and separate it from the sprawl of Spokane Valley."
- ◆ August 9, 1999. The Spokane County Boundary Review Board held a public meeting on the proposal to incorporate Liberty Lake.

■ 2000s

- ◆ February 2000. Liberty Lake 2000 was unable to obtain the required signatures to bring the incorporation issue to a vote but kicked off a renewed effort.
- ◆ April 2000. Liberty Lake 2000 had collected about 250 signatures, sufficient to place incorporation on the November ballot.

- ◆ November 23, 2000. The incorporation vote passed with almost 65 percent approval, 917 to 496, as reported by the Spokesman Review.
- ◆ February 6, 2001. The Primary Election for new City officials was held.
- ◆ April 27, 2001. The General Election results were released.
- ◆ May 7, 2001. New City officials took the oath of office.
- ◆ May – June, 2001. Pat Nevins, a consultant with experience in starting up new cities was hired and interviews were held to select a city administrator.
- ◆ July 2001. The Spokane County Commissioners approved a \$250,000 interest-free loan to the new City for startup costs.
- ◆ August 31, 2001. Official date for the new City.
- ◆ September 2001. The City took over planning functions from the County.
- ◆ October 2001. Negotiations with the County for provisions of police service were protracted and the City forms its own police department.
- ◆ November 2001. City Hall moved into its current leased office space.
- ◆ November 2002. The Meadows annexation added 330 acres to the new City. At the same time, a vote on annexation of another 754 acres failed. The majority landowners favored the annexation but the recent Supreme Court ruling that annexations had to be voted instead of by petition of property owners required the vote to be approved.
- ◆ April 2003. City initiates discussion with the District regarding assumption of responsibilities, services, and assets. This begins a continuum of meetings between the two jurisdictions.
- ◆ September 30, 2003. The City adopts its Comprehensive Plan.
- ◆ November 18, 2003. The City approved Ordinance 120 indicating the City's intent and authority under RCW 35.13A.030 to assume the entire District. (Shown in Appendix B).
- ◆ February 4, 2004. The City engages consultants to conduct a Feasibility Study regarding assumption.

The majority of property owners residing near the lake opposed the formation of the City and an opportunity to be annexed. This area south of Sprague Avenue is not shown as a potential "Future City Annexation Area" in the City's Comprehensive Plan. Property owners were also successful in causing the County's adopted policy and Urban Growth Boundary to be drawn such that the area south of the City limits is designated "Rural Traditional." In other words, protection of the Lake and the status quo have been primary motivations regardless of other forms of government.

On the other hand, the City has consistently moved to exercise its own authority over the services provided to its citizens. One of the fundamental reasons for incorporation is always local control. In the first months, the City decided to employ its own police force rather than contract for that service from the County. The City has successfully developed its own library system rather than continue to contract for that service from the County Library District. A major area was annexed to the northeast of the City in 2002 and another area northwest of the City is under consideration for annexation.

The City's Comprehensive Plan, adopted on September 30, 2003, in Chapter 6 – Utilities, states:

“Public sewer and water are currently provided to the majority of the City by the Liberty Lake Sewer and Water District. It is anticipated that sewer and water will become municipal City services as allowed by state law under RCW 35.13A.”

The City has been actively discussing and planning for the assumption with the District and experts in that field since the spring of 2003.

1.4 Summary of Actions and Key Considerations to Date

This project has evolved over approximately 18 months of dialogue, discussion, and debate. During that time, there have been offers and counteroffers, lawsuits and countersuits, initiated by both jurisdictions. In fact, each entity outlined goals that they initially felt were significant to evaluate and resolve. These initial goals for the City and District are shown in Appendix C. Over time, several of these issues either reached resolution or became moot and, therefore, the entire list is no longer relevant and not discussed in its entirety. However, the following is a summary of the key actions the City and District have taken up to this point. In addition, several key considerations surrounding the assumption process are cited herein.

Internal and bilateral communications between the parties began in the early part of 2003. On April 16, 2003, the City Council and District Board of Commissioners held a joint public meeting where the elected officials discussed the potential of an assumption. At their meeting on April 30, the District Board of Commissioners approved a contract to hire Mr. John Milne, attorney with the firm Inslee, Best, Doezie & Ryder, “to represent the District in legal issues regarding the assumption of the District by the City of Liberty Lake. For the record, Commissioner Tom Agnew explained that by hiring legal counsel to defend the District against the City of Liberty Lake in the assumption issue, that the process could cost several hundred thousands of dollars and take several years.” Subsequently, Inslee Best hired the subconsulting firms of Financial Consulting Solutions Group, Inc. (FCSG) and Century West Engineers, respectively, for financial and engineering support.

The City Council held an open meeting on May 5, 2003 to publicly present their reasons for considering an assumption and to solicit public input. The two bodies of elected officials held a second joint, public meeting on May 19 where the District made its presentation followed by more public input. On June 3, the City Council had a presentation made by Mr. Steve DiJulio, attorney with the firm of Foster, Pepper & Shefelman, regarding the legal procedures and considerations of an assumption effort. Mr. Bob Jean, Manager, City of University Place, made a presentation to the City Council on providing municipal services on June 17. On July 1, the Council had another presentation by Larry Southwick, City of Bellevue-retired, and consultant for this study, on city assumptions of water and wastewater districts. On July 15, 2004, Mr. David Findlay, FCSG, made a public presentation to the District's Board of Commissioners on an assumption feasibility study and services. It may be instructive to note that, as subconsultants to Inslee Best, the District's consultant team has worked within the shield of attorney-client privileged confidentiality. Although the District and its staff have been helpful in responding to data requests, some information was not available for this study. On the other hand, the City's

process has been more open, whereby EES and Southwick are contracted directly with the City and are not constrained by disclosure restrictions.

On October 7, 2003, the City offered a “Proposed Settlement” that proposed a partial assumption whereby the City would assume responsibility for all District assets and responsibilities north of Sprague Avenue and the District would retain the same south of Sprague Avenue. A copy of this proposed offer is shown in the Appendix D. The City would provide, by contract or interlocal agreement, water and wastewater service to the District at the same price as they were provided to City residents. The District would retain full responsibility for lake management and water quality efforts. The City would take over the treatment plant and District office building but continue to provide treatment capacity and office space to the District. The District funds would be transferred to the City for the treatment plant expansion project but the District would retain \$1 million dollars for their own programs in their service area, including lake management.

The District made a counterproposal on October 27 to the City with the following provisions:

1. Jointly work together to perform an economic, financial, and operational feasibility study of both proposals (full or partial assumption). At the conclusion, publish the results of the study so that the community is informed.
2. Put all proposals before the community so that they can express their desire through a vote. The District is prepared to abide by the wishes of the community whatever the result.”

On November 18, 2003, the City Council approved Ordinance 120 which states, “The purpose of this Ordinance is to exercise all authority pursuant to RCW Chapter 35.13A providing for the assumption by the City of Liberty Lake of the Liberty Lake Sewer and Water District, No. 1. The City shall acquire all District property and assume responsibility for provisions of services, maintenance and operations of facilities, allocation of cost, financing, and other related matters, all as set forth in RCW Chapter 35.13A.” Section 9, Administrative Authority, states, “The City Council hereby confers upon the Mayor and designee the authority to perform all acts, including but not limited to the filing of permits, applications and requests reasonably required to accomplish the matters set forth herein, Chapter 35.13A RCW, and all other applicable laws.”

On December 4, 2003, the District filed lawsuit against the City of Liberty Lake, Mayor Steve Peterson, and Doug Smith, Director of Planning and Community Development and Responsible Officials, to stay the City from taking further steps to effectuate assumption, declare Ordinance 120 invalid, find that the City has no authority to proceed under Chapter 35.13A RCW until it submits its ordinance to the voters as required under RCW 35.92.070 and require the City to take the necessary steps required by SEPA before considering such an ordinance

The City submitted a counterproposal on December 17, 2003 to the District that a joint feasibility study be conducted under the guidance of a Steering Committee comprised of:

- one Councilmember
- one staff member
- one District Commissioner
- the District Manager.

Subsequently, a Steering Committee was formed comprised of:

- two City Council members (one representing the Council and the other representing the City residents)
- one District Commissioner
- one member from the public representing the area outside of the City.

A number of meetings were held but the objective of conducting a joint study was not reached leading to the City's selection of its consultants for this Study on February 4, 2004.

Two of the key issues being debated in the procedural steps of assumption center on what level of service is appropriate within an urban setting, and whether a vote of the residents is required to enact an assumption activity. In regard to urban level of services, the Growth Management Act states, "In general, cities are the units of local government most appropriate to provide urban governmental services." (RCW 36.70A.110(4)) Further that "The legislature recognizes that counties are regional governments within their boundaries and cities are primary providers of urban governmental services within urban growth areas." (RCW 36.70A.210(1)) Urban governmental services are defined to include water and wastewater service.

The issue of a vote requirement is one that will be resolved through the courts and legal interpretation, not in this Study. In general, a great deal of legislative authority is granted to state and local governments without requiring votes. In turn, the state statutes are generally explicit when a vote is required. The assumption statutes, RCW 35.13A, specifically excludes the requirement for a vote in an assumption of a water-wastewater district by a city. The District argues in its lawsuit that RCW 35.92.070 applies in this case, and it does require a vote for a city to acquire utility systems. The outcome of the lawsuit pending between the City and District will determine this issue.

The issue of a vote requirement is one that will be resolved through the courts and legal interpretation, not in this Study.

1.5 Statewide Assumptions Summary

RCW 35.13A, Water or Sewer Districts – Assumption of Jurisdiction, was enacted in 1971 to provide authority for cities in the state to assume jurisdiction of water and/or wastewater districts. Previously, in 1967, RCW 36.93 created Boundary Review Boards (BRB) within some counties to review and approve, modify or deny a range of jurisdictional issues, primarily incorporations and annexations. Boundary Review Boards also have jurisdiction over City assumptions of water and/or wastewater districts. In the course of this study, records of BRB actions pertaining to assumption petitions throughout the state were researched. In addition, information available from the Association of Washington Cities (AWC) on assumptions through 1998 was also reviewed.

Table 1-1 summarizes the information described below regarding these assumption cases. It shows 23 attempted assumptions statewide that are documented to date. Of this total, activities were noted in the following counties:

■ Benton County	1
■ Kitsap County	2
■ Pierce County	2
■ King County	18

Table 1-1	
Assumptions of Water and Sewer Districts	
filed with the Boundary Review Boards⁽¹⁾	
County	No. of Assumptions
Benton	1
Chelan	0
Clark	0
Cowlitz	0
Douglas	0
Grant	0
King	18
Kitsap	2
Pierce	2
Skagit	0
Skamania	0
Snohomish	0
Spokane	0
Thurston	0
Walla Walla	0
Whatcom	0
Yakima	0
Total	23

(1) Responses from Chief Clerks to the Association of Boundary Review Boards

The two activities in Pierce County are both for the City of Federal Way's attempted assumption of those portions of the Federal Way Water and Sewer District, within Pierce County (whose name has subsequently changed to Lakehaven Utility District). The City also attempted a similar number of assumptions within portions of King County. Therefore, four of the attempts were by the City of Federal Way, under two attempts in two counties so the effective number of separate attempts is 20 statewide.

Table 1-2 shows a listing of the individual assumptions of Water and Sewer Districts. It shows that, of the 18 attempts listed in King County other than for Federal Way, 9 have been by the City of Bellevue, of which one was in conjunction with the city of Redmond and another in conjunction with the cities of Redmond and Kirkland. Only one of those 9 attempts is identified on the table as contested, but that does not mean that the others were all accomplished without opposition.

Insert Table 1-2

The first five Bellevue assumptions in the early 1970s were accomplished after lengthy negotiated agreements to consolidate all water and wastewater service provision into a new city department of utilities. The outcome was conflicted because of the subsequent consolidation of staff and some members leaving – there were a limited number of career positions and more available staff. The 1993 assumption of the Rose Hill Water District by the cities of Bellevue, Kirkland and Redmond took five years of negotiations to complete, partly due to the nature of working out a common agreement among four different governmental agencies. The Eastgate Sewer District assumption was by negotiated agreement in a very cooperative manner and it took a year just to go through the entire process. The assumption of King County Water District 17 was driven by the desire of the small water district, less than 200 customers, to get out of the business in an area where Bellevue already provided wastewater service and wholesale water to the District.

Table 1-3 shows the eight contested water and wastewater district assumptions on record in Washington State. In eight of the 23 attempted assumptions, the districts have “contested” the cities’ attempts to assume jurisdiction. The BRB has jurisdiction over approval, modification or denial of assumptions and has a specific list of criteria they use to judge each case. The Benton County attempt was denied on that basis. Of the remaining seven attempts, four are really one and the same, that is the two attempts in two counties by the City of Federal Way, a new city at the time, to assume the entire Federal Way Water and Sewer District (name changed to Lakehaven Utility District). That assumption was difficult at best because the District serves areas in a number of different cities and two counties, hence the actions in both King and Pierce Counties. RCW 35.13A requires the approval by each city for their service area in such an assumption by another city. While RCW 35.13A also allows for a partial assumption of the area within a city, the separation and diminution of the remaining district is also problematic. Federal Way was unable to convince the BRB that they could manage and resolve all the problems.

The most current assumption was by the City of Bellevue of a portion of the Coal Creek Utility District. That effort began in 1995 and was essentially completed as of December 31, 2003. The District strongly opposed the assumption in what proved to be a very costly proceeding. In this situation, the District provided service in three cities, Bellevue, Newcastle and Renton, plus unincorporated King County. The other two cities opposed Bellevue’s proposed assumption of the entire District, forcing Bellevue to limit its efforts to a partial assumption. After a lengthy effort, the Boundary Review Board approved Bellevue’s assumption and the District appealed that decision to Superior Court. Before a Court decision was required, the parties negotiated a complex partial assumption agreement, effective as noted above, at the end of 2003.

A number of new cities, such as Shoreline, have chosen to negotiate long-term agreements with districts that eventually provide for assumption. In the mean time, the agreement allows for franchise fees from the districts to the cities to forestall assumption. That arrangement proves attractive where the city might be seeking assumption in order to gain the option of utility tax over that base of ratepayers which is not the case with Liberty Lake. Other cities have expressed interest but would be dealing with complicated assumption efforts due to multiple cities being served by multiple districts, primarily in south King County, where some cities have up to seven districts and any one district may provide service in several different cities. The City of Bothell has recently completed a feasibility study of assumption of portions of three different districts to consolidate utility service within the city but have not yet moved forward with assumption discussions with the districts.

Table 1-3
The Eight Contested Water and Sewer District Assumptions on Record in Washington State

Entities	Date	Status	Comments
Benton County			
Richland/El Rancho Reata Water Company	1991	Denied	1. Preservation of Natural Neighborhoods 2. Use of Physical Boundaries and Prevention of Irregular Boundaries 3. Protection of Agriculture and Rural Lands
King County			
Des Moines/King County Water District # 54	1972	Approval Overturned	Assumption never implemented, Board approval appealed to court and overturned based on bonded indebtedness and service in two cities
Bothell/Woodinville Water District (partial)	1986	Approved w/conditions	Partial assumption of only that portion within Bothell (northwest portion of district consisting of 1.81% of area and 2.68% of valuation)
Federal Way/Federal Way Water and Sewer District	1992	Withdrawn	
Federal Way/Lakehaven Utility District (formerly FWSD)	1997	Denied	Board denial appealed to Superior Court. Federal Way subsequently withdrew its appeal
Bellevue/Coal Creek Utility District	2000	Approved	Board approval appealed to Superior Court. Parties subsequently negotiated agreement Bellevue assumed service area Dec. 31, 2003
Pierce County			
Federal Way/Federal Way Water and Sewer District	1992	Withdrawn	
Federal Way/Lakehaven Utility District (formerly FWSD)	1997	Denied	Board denial appealed to Superior Court Federal Way subsequently withdrew its appeal

1.6 City Policy Decisions

Throughout this proceeding, a number of recurring themes have surfaced in public relations and public information efforts as well as in documents filed as part of or in response to the various legal proceedings outlined earlier. The main issues center on concerns regarding negative impacts to the customers of the District in either degradation of services or increased costs. In summary, these concerns relate to:

- The lack of experience on the City's part in the operation and maintenance of utility systems.
- The future of the existing employees of the District.
- Representation of customers in the unincorporated area.
- The manner in which rates to customers both within the incorporated boundaries and those lying without will be imposed.
- The potential for the imposition of a utility tax to support general city services to which customers in unincorporated areas will not benefit.
- The allocation of general city overhead to utility customers.
- The ongoing protection and preservation of Liberty Lake.

These concerns are recognized by the City and have been the subject of much discussion. In fact, the City has always desired to facilitate a seamless transition that maintains the highest and most efficient level of service and representation. In order to clarify its position on these important policies, the City has passed Resolution No. 04-74 establishing policies that address each of the concerns outlined above. The language adopted in Resolution 04-74 is detailed Table 1-4. The policies are grouped according to Organization, Utility Systems and Operation, or Financial categories.

...the City has always desired to facilitate a seamless transition that maintains the highest and most efficient level of service and representation.

By passing this Resolution, the City has established the policies it will implement. These policies address areas of community concern and show the City's commitment not only to its citizens but also to the enhancement of services available to residents throughout the community.

Table 1-4
Resolution No. 04-74 Policy Summary

Policy Statement No.	Summarized Resolution Language
<i>Organization</i>	
1	The City will offer employment to all District employees and will negotiate compensation commensurate with existing City salaries and benefit programs.
2	The City will form a Utilities Advisory Committee to ensure representation of all customers, inside and outside the City.
3	The Utility Advisory Committee will advise the City on rate issues as well as overall utility concerns including issues related to regional planning and benefit.
<i>Systems and Operations</i>	
4	The City will actively participate in regional issues including the Spokane Aquifer Joint Board and wastewater discharge negotiations.
5	The City will pursue solutions that best benefit utility customers, the Liberty Lake community, the Spokane River, and the region.
6	The City will assume responsibility for stormwater services throughout the current service areas of LLSWD and will maintain protective standards in the surface water watershed.
7	The City will assume responsibility for a credible lake management program that provides water quality and flood management services.
<i>Financial</i>	
8	All overhead expenses will be allocated based upon a fair and equitable distribution calculated using generally accepted allocation principles.
9	The City will apply a cost-based methodology to utility rates and charges, ensuring the collection of utility expenses in a fair and equitable manner from homogenous classes of customers.
10	The City will not impose a surcharge on customers based upon their location, i.e., inside the city limits versus outside the city limits.
11	A utility tax, should one ever be adopted, will not be utilized to fund anything except items of community value, which may include lake management.
12	The City will utilize separate account tracking for water, wastewater, stormwater, and lake management activities.